

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARMAINE W. BROWNING,

Petitioner,

vs.

Criminal Case No. 07-20427

Civil Case No. 12-10459

HON. GEORGE CARAM STEEH

UNITED STATES OF AMERICA,

Respondent.

/

ORDER DENYING CERTIFICATE OF APPEALABILITY

On May 15, 2013, petitioner Darmaine W. Browning filed an appeal of this court's orders denying his 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence, his Rule 59(e) motion, and his Rule 60(b)(6) motion. On May 23, 2013, the Sixth Circuit remanded the case to this court for the sole purpose of determining whether to grant or deny a certificate of appealability. This court's order, dated February 8, 2012, denying his § 2255 motion to vacate, included a ruling denying a certificate of appealability. With regard to his Rule 59(e) motion and Rule 60(b)(6) motion, which merely reiterated arguments already considered in his § 2255 motion, the court also shall deny a certificate of appealability.

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability is issued under 28 U.S.C. § 2253. Rule 11 of the Rules Governing Section 2255 Proceedings, which was amended as of December 1, 2009, requires that a district court issue or deny a certificate of appealability when it enters a final order. A certificate of appealability may issue "only if the applicant has made a substantial

showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Courts must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); In re Certificates of Appealability, 106 F.3d 1306, 1307 (6th Cir.1997). If a § 2255 motion is denied on procedural grounds without reaching the underlying merits, a certificate of appealability should issue if the movant shows that jurists of reason would find it debatable whether the motion states a valid claim and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. See Slack v. McDaniel, 529 U.S. 473, 478 (2000). Petitioner has not demonstrated that jurists of reason would find it debatable that his claims are valid, or that this court's procedural ruling is correct.

Accordingly, a certificate of appealability shall not issue.

SO ORDERED.

Dated: May 23, 2013

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on May 23, 2013, by electronic and/or ordinary mail and also to Darmaine W. Browning #41906-039, Pekin Federal Correctional Institution, P.O. Box 5000, Pekin, IL 61555

s/Barbara Radke
Deputy Clerk